**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 4548 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**BHARTIBEN A SHETTY - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

==========

**Appearance :**
MR BIPIN I MEHTA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3,

==========

**CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

**Date : 25/07/2007**

**ORAL JUDGMENT**

1. By way of this petition, the petitioner has prayed for quashing and setting aside the order dated 08.01.97 and thereby directing the authorities to

consider the petitioner's seniority over the respondent no.3 and further directing the respondents to give all consequential benefits as if the petitioner is considered and treated senior to respondent no.3.

2. The brief facts deserve to be narrated in order to appreciate the controversy in the present petition and the same are as under:

2.1 The petitioner was appointed on the post of Typist (English) on 17.03.69 The petitioner came to be promoted to the post of Accountant on 15.11.80. The petitioner was thereafter reverted to the post of typist on 15.05.87. It is the say of the petitioner that she was required to be promoted to the post of Deputy Chitnis on 02.07.79 when the respondent no.3 one Shri B.S Anand was promoted. The petitioner came to be promoted to the post of Deputy Mamlatdar(Deputy Chitnis) only on 30.06.90. The petitioner retired from that post on her attaining the age of superannuation i.e on 30.06.2006.

2.2 The petitioner was initially appointed on temporary basis on the post of Typist vide order dated 15.03.69. The order is produced at Annexure 'A' at page 17 of the petition. The order indicates that as the petitioner's name was sponsored by the Employment Exchange and as she was selected in the selection process she was appointed as typist with effect from 17.03.69 in the scale of 91-3-130-4-170

on temporary basis. It was also indicated in the order that the appointment was purely on temporary and on ad-hoc basis and whenever her services were not required it was to be put to an end without even issuance of notice.

2.3 As subsequently the post of typist was covered under the purview of the selection committee and as she had cleared the test under the Government Resolution Circular dated 27.06.73 she was treated to have been regularly appointed as a Typist in the department. The order at Annexure 'B' dated 19.11.73 goes to show that as she had cleared the examination as per the provisions of the circular dated 27.06.73, her temporary appointment was regularized. This letter was issued by the Secretary, Gujarat Panchayat Service Selection Board, Ahmedabad. The provisional seniority list was published on 16.10.75 as per the order of the Secretary, Gujarat Panchayat Service Selection Board wherein her date of appointment was shown to be that of 02.01.74. It is mentioned in the order at Annexure 'C' dated 16.10.75 that this was a provisional seniority list and if any employee has any grievance the same shall be raised within one month from the date of issuance thereof.

2.4 The final seniority list came to be issued vide order dated 16.01.87 wherein also she was shown at Sr.No. 17 and her date of appointment was treated to be 02.01.74. The respondent no.3 is shown at Sr.No. 8 though his date of appointment is shown to be

07.05.76 whereas in the case of the present petitioner though her appointment date is shown to be 02.01.74 she has been said to be junior to the said respondent no.3. On 06.12.85 the final seniority list of Clerks and Typist was published wherein also the respondent no.3 is shown above the present petitioner. The petitioner made representation on 23.11.95 and lodged her grievances. Again on 04.01.96 she represented to the authorities about her grievances. Ultimately on 08.01.97 the final seniority list was published wherein the petitioner was shown to be junior to Shri Anand-respondent no.3 whose date of appointment was treated to be 02.01.74.

2.5 The petitioner had moved the Gujarat Civil Services Tribunal by preferring appeal no. 8/96 voicing her grievance which came to be dismissed by the Tribunal vide order dated 31.03.97. The petitioner's main grievance is that though she was appointed on a temporary basis initially in the year 1969 that itself cannot be treated as irregular in any way as at the relevant time her name was sponsored by the concerned Employment Exchange and in the year 1969 when she came to be appointed as a typist the Centralised Recruitment Scheme was not even in the offing and therefore her appointment in the year 1969 cannot be said to be irregular appointment.

2.6 In the alternative the petitioner has submitted that after the advent of Centralized Recruitment

Scheme which came to be implemented under the Recruitment Rules known as Gujarat Non-Secretariat Clerks, Clerk-typists and Typists (Direct Recruitment Procedure) Rules, 1970 and its amendment, she passed the examination in the year 1973 and therefore on 22.11.73 the Secretary, Gujarat Panchayat Service Selection Board issued an order treating her appointment to be regular appointment and therefore atleast from that date i.e. from the date of her passing the examination she is entitled to reckon her seniority as atleast from that date she came to be said to have been regularly appointed typist in the cadre of typist.

3. Mr Ketan Dwivedi, learned AGP appearing for the respondent has resisted this petition on the ground of delay and latches. He has contended that the petitioner's service was regularized vide notification dated 27.06.73 in pursuance whereof examination was conducted in the year 1973 and she was declared successful on 22.11.73 and thereafter her seniority was required to be determined in accordance with the notification by 02.01.74 produced at page 94. Mr Dwivedi has further submitted that the petitioner was irregularly appointed in the initial stage and as her service could be regularized only after her passing the examination in the year 1973 she would be governed by the resolution dated 02.01.74. The resolution dated 02.01.74 clearly stipulates that such employees are to be treated to have been regularized under this resolution and

therefor the date of appointment is to be considered as 02.01.74 i.e. the date of the notification itself and the seniority is to be governed accordingly.

4. Mr Dwivedi has relied upon the decision of the Apex Court in the case of B.S Bajwa and Another vs. State of Punjab and Others reported in 1998(2)SCC 523 and submitted that the delay and latches on the part of the employee in challenging the seniority decision was to be taken into consideration and therefore the belated claim of seniority need not be entertained by the Court under Article 226 of the Constitution of India.

5. Heard learned counsel appearing for the respective parties. This Court is unable to accept the submissions of Mr Dwivedi. It deserves to be noted that the Centralized Recruitment Scheme came into existence in the year 1970 and for the first time the recruitment rules were framed under which the recruitments to the post of clerk, clerk cum typist and typist in the non secretariat offices were governed. Under this scheme, the District Collectors were to hold examination for preparing list of eligible clerk and clerk cum typist to be allocated to the various offices in the district.

5.1 As per this scheme the so selected candidates were alloted to the concerned office. The rules were infact required to be amended as there were employees

like the petitioner who were infact appointed prior to 1970 and were continuously serving as such may be on temporary posts. For the first time it was therefore laid down that such employees i.e. who were in continuous service for all these years shall be regularized on their clearing the examination under the Gujarat Non-Secretariat Clerk and Clerk-Typists (Training and Examination) Rules, 1970. As this set of employees were to be regularized the recruitment rules were required to be amended and accordingly they were amended. By this amendment, the employees who had put in service of more than two years by 1968 were regularized and in their case they were given seniority from the date of their passing the examination.

6. Mr Mehta has contended in the rejoinder that similarly situated so called irregularly appointed two persons namely Mr. R.J Shelat and Mr. R.J Patel who came to be regularized under the earlier set of scheme were permitted to retain the date of their passing of the examination which was in consonance with these rules. The circular dated 27.06.73 provided one more chance to the left out employees who were appointed irregularly so to say and were continuously serving in the department to get themselves regularized by taking examination under the Recruitment Rules, 1970.

6.1 Accordingly, the petitioner appeared and succeeded in the examination in the year 1973 and

therefore the order at page 18 dated 22.11.73 came to be passed declaring her to be regularly appointed Typist or treating her to be regularly appointed Typist on her passing the examination. The date of 02.01.74 assigned to the petitioner is because of the resolution dated 02.01.74. This resolution provides that the Typists, Clerk and Clerk cum Typists who have been regularized thus are to be treated to have been appointed only from 02.01.74 for the purpose of seniority. This resolution also contains reference to the circular dated 27.06.73 wherein the petitioner was eligible and entitled to take the examination which was required for her being regularized and it also refers to the notification dated 02.01.74 wherein the recruitment rules, 1970 are amended and it is inserted as under:

> "*(aa) The Persons initially recruited as Clerks, Gujarati/English Clerk-Typists and English/Gujarati Typists otherwise than through procedure of direct recruitment as laid down in the rules referred to above but were within the age limit of 25 years in the case of Clerks and Clerk-Typists and 28 years in the case of typists and were subsequently continued as Clerks, English/Gujarati Clerk-Typists and English/Gujarati typists in the Departments or offices to which these rules apply and who have rendered not less than 2 years' continuous service as Clerks, English/Gujarati Clerk-typist and English/Gujarati Typists as on 31st December, 1972 in the aforesaid departments/offices as Clerks, English/Gujarati Clerk-typists and English/Gujarati typists on the date of this notification shall be required to appear at the special interview and/or the special

> typing test to be held for them for their selection for appointment to the posts of Clerk or Clerk-typist or typist as the case may be, provided that the services of such persons as have qualified themselves as per the orders contained in Government Resolution, General Administration Department No. -1173-K dated 27th June, 1973 at the interview or typing test, as the case may be; held before issue of this notification shall be deemed to have been regularized under this rule."

7. Thus by virtue of this amendment in the recruitment rules the persons like the petitioner came to be treated to be appointed under these very rules and they were to be governed by these rules for all purposes. The seniority of non secretariat clerk, clerk cum typist are governed by the Gujarat Non-Secretariat Clerk and Clerk cum Typists(Training and Examination), Rules 1970 and under these rules the seniority is to be counted from the date of passing the examination. These rules thus provide that the seniority of these employees are to be governed on the basis of the date of passing of the examination. In accordance with this seniority rules, Mr Shelat and Mr Patel who were identically situated so far as their irregular appointment is concerned with the petitioner have been accorded the seniority from the date of the passing of their examination whereas this deviation in case of the petitioner is because of the fact that the 1974 notification came into existence after she passed out the examination.

8. The 1974 notification if read closely would not govern the case of the present petitioner at all as the 1970 recruitment rules amendment itself takes care and provides for deeming fiction that such employees are to be treated as having been recruited under these rules i.e rules of 1970. The notification of 1974 amending the 1970 recruitment rules is thus unequivocally clear so far as the treatment of the present petitioner and similarly situated employees are concerned. The respondent therefore cannot deny the benefit of seniority from the date of passing to the examination to the present petitioner only on account of a government resolution issued on 02.01.74.

9. The seniority is admittedly governed by the rules made under the powers conferred upon the State under Article 309 of the Constitution of India. By virtue of the 1974 notification amending the recruitment rules of 1970, the petitioner is treated to have been regularly appointed under these very rules and therefore she is entitled to be governed as such. The 1974 resolution assuming for the sake of examining the submission that governs irregularly appointed employees like the present petitioner then also the same shall not be treated to be governing the case of the petitioner contrary to rules of seniority which are framed by the State under the powers conferred under Article 309 of the Constitution of India.

10. The State has not answered as to why Mr Shelat and Mr Patel were permitted to retain the date of passing of the examination as the date of appointment and why the petitioner is given artificial date of 02.01.74. The submission of Mr Dwivedi that when Mr Shelat and Mr Patel were infact considered to have been appointed earlier and therefore at that time as the 1974 resolution was not in existence they were permitted to retain the date of the examination. Mr Dwivedi's submission deserves to be rejected as it is bereft of any merits. The situation is absolutely identical as it is stated hereinabove.

11. The recruitment process has taken place atleast two times as it appears from the record and on both the occasions the necessary amendment were made in the recruitment rules of 1970 and in the earlier set of employees they were permitted to retain the date of passing examination for fixing seniority whereas in the second set of employees wherein the present petitioner is part were not permitted to take the date of the passing of the examination and were required to accept the date 02.01.74 i.e the date of resolution. This in itself is discriminatory. The resolution dated 02.01.74 has no nexus with the purpose or motive to be achieved and therefore to that extent so far as the present petitioner is concerned the notification has no effect. The date assigned to the petitioner i.e. 02.01.74 is not proper and has resulted into discrimination and

therefore the same deserves to be deprecated.

12. The petition cannot be said to have been suffering from latches and delay as the aforesaid discussion would show that the petitioner had been pursuing her cause persistently and made representations and also had to move the Tribunal for that cause. The Tribunal has not appreciated the controversy in its true perspective and passed the order rejecting the application of the petitioner. The cause of the petitioner ought to have been viewed with a perspective in mind that at the relevant time the recruitment rules were not existent and when the recruitment rules came into existence, the post of Typist fell under the purview of Centralized Recruitment Scheme and when the employees like the petitioner were to be regularized they were regularized by amending the recruitment rules therefore when one set of employees were permitted to retain the date of passing examination the other set of employees like the petitioner could not have been denied the same treatment only on artificial ground of fiction that they ought to have been treated as regularized from 02.01.74 ignoring the fact that they were made eligible to take examination by the circular dated 17.06.73 itself.

13. In view of this the petition deserves to be allowed. The time lapsed between the filing of the petition and the final decision deserves to be borne in mind before issuing final direction to the

respondents. It deserves to be noted that the respondent no.3 has though been served chosen not to be represented.

14. In the result, the petition is allowed. The order of the Tribunal is accordingly quashed and set aside. The petitioner is declared to have been entitled for treating her date of appointment as regularized appointment from the date of passing examination as it happened in the case of Mr R.J Shelat and Mr R.J Patel and is entitled to all the consequential benefits arising therefrom. As the petitioner has retired and as other likely effected parties also would have retired now there should not be any heart burn after the position is changed. However, it is clarified that the benefit is now to be calculated in terms of monetary benefits only and accordingly without disturbing the other likely affected parties and employees the benefit be calculated and given to the petitioner within a period of one month from the date of receipt of the writ of this Court. Mr Dwivedi makes a request for staying of this order for a period of two weeks. The said request is rejected. Rule is made absolute to the aforesaid extent.

(S.R.BRAHMBHATT, J.)

Divya//